

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

WANDA BYRD,

Petitioner,

v.

CIVIL ACTION NO. 5:07-cv-00704  
(Criminal No. 5:06-cr-00115-01)

UNITED STATES OF AMERICA,


Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the Court is Petitioner Wanda Byrd's motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence [Docket 43]. This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge has submitted findings of fact and recommended that the Court deny Petitioner's § 2555 motion. Neither party has filed objections to the magistrate judge's findings and recommendation. Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the magistrate judge and **DISMISSES** Petitioner's § 2255 motion without prejudice for failure to prosecute.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: February 22, 2011

  
\_\_\_\_\_  
THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE